

Cite as Det. No. 07-0354, 27 WTD 131 (2008)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Request For Prior Ruling of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 07-0354
)	
....)	Registration No. . . .
)	Request for Prior Ruling
)	Docket No. . . .
)	

[1] WAC 458-61A-103; RCW 82.45.030: REAL ESTATE EXCISE TAX (REET) -- SELLING PRICE -- CONSIDERATION -- ASSUMPTION OF DEBT. Taxpayer, a one third owner of real property encumbered by mortgage on which all three owners were jointly liable, who quit claimed property to other two owners, owed REET on cash consideration received plus one-third of the balance of the mortgage.

[2] WAC 458-61A-102(17); RCW 82.45.030: REAL ESTATE EXCISE TAX (REET) - - SELLING PRICE CONSIDERATION -- FAIR MARKET APPRAISAL. Taxpayer was not liable for REET based on one-third of balance of the mortgage plus one-third of the appraised value; Department may only use appraised value to determine a "selling price" when the price paid does not accurately reflect the true and fair value of the property, which was not the case here.

Prusia, A.L.J. – The seller of a one-third interest in real property requests correction of a Department ruling that she owed real estate excise tax (REET) on one-third the appraised market value of the property plus one-third the amount of the outstanding mortgage on the property. We modify the ruling.

ISSUE

Under RCW 82.45.030, was REET owed on one-third of the appraised value plus one-third of the outstanding mortgage or was it owed on the consideration paid plus one-third of the outstanding mortgage?

FINDINGS OF FACT

[Taxpayer] was a joint owner of an undivided one-third interest in real property located [in] Washington The other joint owners were the taxpayer's mother, . . . , and the taxpayer's sister, The property was encumbered by a mortgage . . . on which all three owners were liable. Although [Taxpayer's mother's] name was on the mortgage, she never made any payments on the mortgage.

On . . . , 2007, Taxpayer and [Taxpayer's mother] conveyed their interests in the above-described property to [Taxpayer's sister] by quitclaim deed. At the same time, [Taxpayer's sister] refinanced the mortgage on the property. The HUD-1 settlement document shows that the taxpayer was paid \$. . . at closing, \$. . . of which was disbursed to the . . . County Treasurer to pay Real Estate Excise Tax (REET) and \$. . . of which was disbursed to the taxpayer. Taxpayer states that [the amount paid at closing] was one-third of the assessed value of the property. The HUD-1 document also shows that the outstanding indebtedness on the . . . mortgage at the time of refinancing was \$. . . . On . . . , 2007, Taxpayer and [Taxpayer's mother] filed a REET affidavit stating that the selling price of the property was [the amount paid at closing] and REET of \$. . . was due.

[Later in] 2007, the taxpayer wrote to the Department of Revenue's Taxpayer Information and Education Section (TI&E) to request verification that Taxpayer's tax obligation had been satisfied on the property transfer. The Taxpayer's sister also wrote to the Department, requesting the same verification. On . . . , 2007, TI&E issued the following ruling:

The tax is based on the *appraised* value of the property, not the assessed value. The appraised value, according to your sister, is \$. . . . In addition, the amount of the outstanding mortgage is part of the consideration that must be included in the tax measure.

Your taxable interest in the property is one-third. This means one-third of the appraised value and one-third of the outstanding mortgage should be the amount reported on the real estate excise tax affidavit and tax paid on that amount. . . . The total amount upon which the tax is due is \$. . . . If this amount was not reported on the affidavit, then a revised document must be filed in . . . County.

Taxpayer appeals the TI&E ruling, stating REET was paid on the assessed value because no actual sale took place, she had called the Department and been told that in the absence of an actual sale the assessed value could be used, and the only amount of money that had changed hands was [the amount paid at closing].

ANALYSIS

RCW 82.45.060 imposes an excise tax (REET) upon each sale of real property, at a specified percentage of the selling price. The tax is the seller's obligation. RCW 82.45.080. As required by RCW 82.45.150, the Department has prescribed a REET affidavit form to be completed and filed by the seller.

REET is payable at the time of sale, and if not paid within one month bears interest from the time of sale to the time of payment. RCW 82.45.100. A delinquency penalty also is assessed if the tax is not timely paid. RCW 82.45.100(2). REET is explained in Department rules at Ch. 458-61A WAC.

RCW 82.45.010 defines "sale" as having its ordinary meaning and including any transfer of ownership in or title to real property, or any interest therein, for "a valuable consideration." RCW 82.45.010(3)(a).

RCW 82.45.030 defines "selling price" as follows, in relevant part (emphasis added):

(1) As used in this chapter, the term "selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor, or to another for the transferor's benefit.

(3) As used in this section, "total consideration paid or contracted to be paid" includes money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, **and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale**

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of sale shall be used as the selling price.

WAC 458-61A-102(17) attempts to explain the definition of "selling price." It states, in relevant part:

"Selling price" means the true and fair value of the property conveyed. There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation . . .

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

(c) When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership transferred, and that amount added to any other consideration to determine the selling price.

WAC 458-61A-103 further explains the REET application to transfers involving an underlying debt., as follows (emphasis added):

The real estate excise tax applies to transfers of real property when the grantee relieves the grantor from the underlying debt on the property or makes payments on the grantor's debt. **The measure of the tax is the combined amount of the underlying debt on the property and any other consideration.**

For example, Yen transfers property to Lee that is subject to an underlying debt. Yen is personally liable for the debt, meaning that if Yen does not make the payments the lender may foreclose on the property and obtain a judgment against Yen if the value of the property is insufficient to pay the debt. Lee agrees to make all future payments on Yen's debt but gives no other consideration for the property. Yen owes real estate excise tax on the amount of the underlying debt. Lee's payments on the underlying debt relieve Yen of her debt obligation. Therefore, Yen receives consideration.

[1] Taxpayer transferred an ownership interest in real property. Taxpayer received [the amount paid at closing] for Taxpayer's one-third share. Taxpayer's sister also refinanced the debt on the property, which relieved Taxpayer of Taxpayer's liability on the outstanding mortgage. Under the above statutes and rules, there was a sale of a real property interest by Taxpayer, and Taxpayer received consideration of [the amount paid at closing] plus one-third of the amount of the . . . mortgage debt. The "selling price" by Taxpayer was [the amount paid at closing plus one-third of the mortgage debt]. . RCW 82.45.030. The taxpayer owed REET on that selling price. RCW 82.45.060.

[2] Thus, we modify the TI&E ruling. The ruling did not explain why REET would be due on the appraised value of the property rather than on the actual consideration paid, and we see no basis for such a ruling under the facts of this case. We note that under Department rules, the Department may use the fair market appraisal value to determine a "selling price" when the price paid does not accurately reflect the true and fair value of the property (WAC 458-61A-102(17)), but that circumstance is not present here. Taxpayer received consideration . . . , which more than reflected the true and fair value of her one-third interest in the property – her consideration was more than one-third the assessed value . . . and more than one-third of the appraised market value

DECISION AND DISPOSITION

The taxpayer's petition is granted in part.

Dated this 19th day of December 2007.